Supreme Court, U. S.
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In the Supreme Court of the United States

October Term, 197

NO. 75-1739

DADE COUNTY CLASSROOM TEACHERS' ASSOCIATION, INC.,

Petitioner,

vs.

NATIONAL EDUCATION ASSOCIATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ELIZABETH J. DU FRESNE
TOBIAS SIMON &
ELIZABETH DU FRESNE, P.A.
1492 South Miami Avenue
Miami, Florida 33130
Counsel for Petitioner

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DADE COUNTY CLASSROOM TEACHERS' ASSOCIATION, INC.,

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vs.

NATIONAL EDUCATION ASSOCIATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, DADE COUNTY CLASSROOM TEACHERS' ASSOCIATION, INC., (hereinafter DCCTA), respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on March 3, 1976 in its affirmance of the decision of the United States District Court, Southern District of Florida, entered September 30, 1974 embracing the conclusions and findings of the Court's June 27, 1974 order.

OPINION BELOW

None of the opinions of the lower federal courts have been reported. Both decisions appear in the Appendix to this Petition.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered March 3, 1976 and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

I

WHETHER A PREDOMINANTLY PUBLIC SECTOR EMPLOYEE UNION IS COVERED BY THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT (LANDRUM-GRIFFIN, 29 U.S.C. §401, et seq.) ONCE THE UNION TAKES IN SOME PRIVATE SECTOR EMPLOYEE MEMBERS AND LOCAL AFFILIATES?

II

WHETHER A LOCAL UNION OR ONLY INDIVIDUAL UNION MEMBERS CAN INVOKE THE PROTECTIONS OF THE LABOR BILL OF RIGHTS, i.e., 29 U.S.C. §411?

III

WHETHER THE EXPULSION AND DISAFFILIATION OF DCCTA FROM ITS STATUS AS A LOCAL AFFILIATE BY THE NEA WAS VALID UNDER THE STANDARDS FOR UNION DISCIPLINE CONTAINED IN THE LANDRUM-GRIFFIN ACT, SPECIFICALLY 29 U.S.C. §411 (a)(2) AND (a)(5)? THAT IS, WHETHER A PARENT UNION MAY EXPEL AN AFFILIATE FOR "ASSOCIATING" WITH ANOTHER ORGANIZATION OR FOR SPEAKING OUT TO URGE OTHERS TO ENGAGE IN MERGER FOR THE SAKE OF LABOR PEACE IN THE PUBLIC SCHOOLS?

STATUTORY PROVISIONS INVOLVED

United States Code, Title 29, §402(i) and (j); §411-(a) (1) and (2); §412. (Copies of all these statutory provisions are set out verbatim in the Appendix to this Petition.)

STATEMENT OF THE CASE

The jurisdiction of the federal trial court below was initially invoked because of diversity of citizenship between the complaining party, NEA, a Washington, D.C. chartered corporation, and the Defendant, DCCTA, a Florida corporation. A counterclaim later rested on both diversity jurisdiction and on the court's federal question jurisdiction in that the application of the LMRDA (Landrum-Griffin Act) and its protections was of foremost consequence.

In January, 1974, the NEA filed two separate, although philosophically akin, actions against DCCTA. The first action was an intra-union move to disaffiliate DCCTA because of a pending merger with another Dade County teachers' groups, an affiliate of NEA's rival national union, the American Federation of Teachers, AFL-CIO. The second action was a suit against DCCTA in the United States District Court for the Southern District of Florida. The federal suit sought to collect a 6-year-old $30,000.00 "loan" or "grant" from NEA to DCCTA. The simultaneous actions—the union disaffiliation and the collection of an old, questionable debt—were viewed by DCCTA as intimately connected and part of an NEA movement calculated to stifle dissent on the then and now "hot" issue of merger, locally and nationally, of the two teacher groups.

DCCTA filed an Answer and Counterclaims to that suit. The NEA Complaint was dismissed after a stipulated settlement and the case—including the appeal and this Petition—focused on the cause of action embraced in Counterclaim No. 2, which alleged:

> "The NEA's actions in seeking to peremptorily, arbitrarily, and maliciously disaffiliate its local affiliate, the DCCTA, amount to a blatant violation of the Bill of Rights of Labor members contained in 29 U.S.C. §411.
>
> "As provided in 29 U.S.C. §411(5)(b), NEA's New Business Item #52 as well as their entire constitutional and by-law hearing system, under which they seek to disaffiliate the Counter-Plaintiff, are void and of no force or effect in that

> they are inconsistent with both the literal language and the Congressional intent and spirit of the Landrum-Griffin Act.
>
> . . .
>
> "NEA affiliation is a definite attraction for many of CTA's members. Not only will loss of this affiliation bring possible loss of membership, but the obvious threat is that NEA will set up a new, competitive labor organization for teachers in Dade County and the labor peace that CTA sought in its merger will go up in proverbial smoke.
>
> . . .
>
> "On January 16, 1974, (the day before the instant lawsuit was filed) the President of the NEA wrote the acting President of CTA a letter, stating that the NEA Executive Secretary had filed a charge against the DCCTA alleging that CTA had engaged in a willful violation of a written policy of NEA and that CTA's continued affiliation with NEA would be 'prejudicial to the best interests of the NEA.'
>
> . . .
>
> "The disciplinary action against CTA amounts to retaliation from the parent labor organization for activities on CTA's part which are protected by Federal labor law and by First Amendment guarantees of free speech and freedom of association.
>
> . . .
>
> "Loss of affiliation with NEA will cost Counter-Plaintiff incalculable loss of prestige, member-

ship, revenue, and services. Counter-Plaintiff has no adequate remedy to this threatened injury, save in this Counter-Claim.

"WHEREFORE and by reason of the foregoing, Counter-Plaintiff prays that this Honorable Court will take jurisdiction of the within Counter-Claim; will enjoin the Defendant from taking any further steps to disaffiliate the CTA from NEA; will enjoin the holding of any hearing and procedures outlined above; will assess appropriate damages against NEA for losses already suffered by CTA; and will grant such other and further relief as the Court may deem just and proper."

DCCTA moved for a temporary restraining order or preliminary injunction enjoining the disaffiliation hearing on the grounds of the prematurity of such action on NEA's part considering that the proposed merger date was still many months away and the sole effect of an imminent disaffiliation was to effectively silence dissent on the merger matter prior to the union's national convention. Those motions were denied; the disaffiliation hearing was held; the anticipated disaffiliation order issued from the NEA Executive Board on April 22, 1974. The General Counsel of NEA had stated at the hearing that the Dade County "situation" would serve as an example to the "many local and state affiliates . . . who are presently contemplating a possible merger which would entail AFL-CIO affiliation." He said: "I think it's vital that those affiliates, who are contemplating, perhaps even engaging in similar activity, fully understand the consequences." Dade was made the example in the disaffiliation hearing in which that same General Counsel served as prosecutor.

Trial Findings

The judge entered his findings of fact and conclusions of law. He found that NEA was a private association dedicated to organizing teachers into coherent bargaining units. It has a total membership of 1,439,663 persons: 1,434,510 persons employed in the public sector; and 5,153 members employed by private employers. NEA's Representative Assembly passed in 1972 Business Item 20 which prohibited NEA and its affiliates from entering into mergers which would require affiliation with the AFL-CIO. However, NEA affiliates which had already entered into such mergers were exempt from the prohibition. In 1973, the Assembly reiterated that position in New Business Item 52 after vigorous debate. Despite passage of Item 52, a number of NEA locals continued to discuss merger with local AFL-CIO affiliates. There was a considerable movement seeking the repeal of Item 52 at the 1974 assembly.

On December 10, 1973, the members of the DCCTA voted to accept a merger agreement with the Dade County Federation of Teachers, a local affiliate of the AFL-CIO which resulted in the later establishment of a new organization, the United Teachers of Dade, which would be affiliated with the AFL-CIO as well as the NEA. NEA instituted proceedings to determine whether DCCTA had violated Item 52 and decided after full hearing, that DCCTA "has entered a merger requiring affiliation with the AFL-CIO" and that DCCTA's "continued affiliation would be prejudicial to the best interests of the NEA." DCCTA was disaffiliated April 22, 1974.

Finally, the Court found that: "Business Item 52 is a very reasonable rule relating to the responsibility of every member to the organization as an institution."

Trial Legal Conclusions

The Court concluded that since "NEA is a private organization, NEA's adoption and enforcement of Business Item 52 did not violate the First Amendment guarantees of freedom of speech and assembly" and that NEA's adoption and enforcement of Business Item 52 "did not violate the freedom of speech and assembly provisions of the Labor Bill of Rights because Business Item 52 is a reasonable rule relating to the responsibility of every member to the organization as an institution. 29 U.S.C. §411(a)(2)(1970)."

On September 30, 1974, in an order encompassing those findings and conclusions, the Court dismissed Counterclaim No. 2 on the merits.

Appellate Decision

After lengthy briefs and oral argument, the Court of Appeals for the Fifth Circuit issued a per curiam affirmance of the lower court's ruling.

REASONS FOR GRANTING THE WRIT

I

THE DECISIONS BELOW CONFLICT IN PRINCIPLE WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT AND THE COURTS OF APPEAL OF THE SECOND, THIRD AND SIXTH CIRCUITS AS TO THE PROPER INTERPRETATION OF THE PROTECTIONS GRANTED BY 29 U.S.C. §411.

It is questionable whether this case—admittedly one of first impression—can offer an instance of *true* conflict jurisdiction under Rule 19. However, the *analogous* decisions of this Court and of the appellate courts listed above emphatically illustrate a dramatic conflict with the fundamental principles applied by the courts below in constructing the LMRDA.

For example, both *Hall v. Cole*, 412 U.S. 1, 36 L.Ed.2d 702, 93 S.Ct. 1943 (1973) and *Linn v. United Plant Guardworkers*, 383 U.S. 53, 15 L.Ed.2d 582, 86 S.Ct. 657 (1966) have underscored this Court's belief that the federal labor laws must be applied so as to achieve an elimination of intimidation within labor unions and to encourage free, even fierce debate. The decisions below specifically approved as reasonable the use of parent union tactics which designedly silence debate by locals.

The Second Circuit has in case after case held that discipline of a local union member by the local or the international, no matter how "legal on the surface, amounts to reprisal and cannot be condoned if the real motivation is to limit discussion or advocacy of change. *See, e. g. Salzhandler v. Caputo*, 316 F.2d 445 (2d Cir. 1963)[1]; *Schonfeld*

[1]A local union member discovered and publicized what he believed to be dishonest financial transactions of the local president. The member was suspended for 5 years under a union constitutional provision which prohibited libeling. The trial court upheld the discipline, finding the publicity to be libelous. The Second Circuit reversed and ordered an injunction of the discipline and assessment of damages. The court stated that inquiry and criticism towards the union as an institution was "clearly in the interest of proper and honest management of union affairs." Discussion of such matters is permissible, even desirable—despite the cost of the inevitable dissension that flows from it.

v. Penza, 417 F.2d 809 (2d Cir. 1973)[2]; *N.L.R.B. v. Teamsters, Local 294*, 470 F.2d 57 (2d Cir. 1972)[3]; *Navarro v. Gannon*, 385 F.2d 512 (2d Cir. 1967)[4]; *Giordani v. Upholsterers International Union of North America*, 403 F.2d 85 (2d Cir. 1968)[5]; *Farrowitz v. Association of Musicians of Greater New York, Local 802*, 330 F.2d 999 (2d Cir. 1964)[6]. Similarly, the Courts of Appeal for the Third and Sixth Circuits have held that union discipline which has a chilling effect on debate within the union, is offensive to the precept of the Labor Management Reporting and Disclosure Act. *See, e.g.:*

> "To permit a union to punish its members for meeting and discussing affairs of the union, would be to deny the very purpose of the Bill of Right's provisions of the act. It was a concern for great democracy within unions which originally prompted Congress to enact these provisions. Since no democracy can flourish where freedom of speech and assembly are hindered by threats of reprisal, the actions of the appellee union in this case were calculated to frustrate the effectiveness of a clearly stated national policy."

---

[2]The Court has not restricted its consideration of motivational circumstances to the moderate, reasonable announced posture of the parent union. Schonfeld grew out of intense infighting in the politics of the New York Painters' Union at the district level with a group of its locals. The court said that the district council's removal of a local officer, although done in accordance with proper and legal procedures and causes, was nonetheless a "reprisal for efforts by Schonfeld and others to advocate and implement changes of union structure and procedures" and could be for the purpose of "suppressing opposition and dissent within the union."

[3]470 F.2d at 62:

> "It matters not that the grounds urged by the union to support disciplinary action may have a semblance of lawfulness if the true motivation for the action was unlawful."

[4]*Navarro* arose from the problems between a local and international union in which the local was moving to disaffiliate from the I.W.A.: 385 F.2d at 512, 515, 518.

> "[T]he official of a local union will not be permitted to retaliate against members who attend meetings to consider affiliation with an international union. Johnson v. Local Union #58, International Brotherhood of Electrical Workers, 181 F.Supp. 734 (D.C.Mich. 1960). These rights should be similarly protected against invasion from without the local, for the guarantees carefully enforced against officers of the local would amount to nothing if they could be enjoyed only by the grace of the International.
>
> * * *
>
> "The international union concededly acted to restrain a recalcitrant local from leaving the fold—but the guaranty of self-determination contained in Title I of the Act protects the local members against such unwanted beneficence. The fundamental requirement of union democracy is that decisions are made according to the expressed desires of those affected; and this requirement is met only where there is full freedom to criticize, to dissent, and to oppose.
>
> * * *
>
> "In electing a new slate of officers in 1965, in asking whether the present insurance company was administering the welfare program successfully, and *even in asking whether their particular interests were best served* by affiliation with I.W.A., the members of Local 2 were exercising their rights of self-government. Their activity and spirit might be an embarassment to the I.W.A.; a uniform stance rather than the independence and controversy guiding Local 2 might be preferable to the International. But in Title I [of the LMRDA] the legislature indicated its preference in union government no less than in political government for the tumult of democracy rather than the order of imposed authority."
> [Emphasis supplied]

[5]The Court said it is not in the "precise words said, but rather what was being talked about." If the underlying topic of discussion concerns "union affairs," then those who speak out cannot be punished.

[6]Farrowitz did the unforgiveable. He urged the union members to stop paying their dues! He was found guilty of seeking to "undermine the very existence of the local" and was expelled. The Court ordered him reinstated because what he "was suggesting [was] one rational method of testing [a union tax's] validity and forcing an alteration in union policy." 330 F.2d at 1002.

Kuebler v. Cleveland Lithographers & Photoengravers Union, Local 24, 473 F.2d 359, 364 (6th Cir. 1973).

> "The purpose of construing union power narrowly and the members' freedom of speech broadly is to foster truly democratic governance in labor unions. The Supreme Court has recognized that the issues involved in labor relations are sufficiently critical to justify broad protection . . . and other federal courts have long understood that: 'The democratic and free expression of opinion in any group necessarily develops disagreements and divergent opinions.'"

Semancik v. United Mineworkers of America, District No. 5, 466 F.2d 144, 153 (3rd Cir. 1972).

In direct conflict with each of the above decisions is the finding and holding in the case at bar that finds as reasonable the NATIONAL EDUCATION ASSOCIATION'S actions in successfully forcing the DCCTA to go through a hearing which effectively cut off that dissident voice within the NEA'S structure, prior to the national convention and prior to the merger of which NEA was complaining. This action *had* a chilling effect and *has* a chilling effect on the free speech and free association rights of every NEA affiliate in the Country. The DCCTA was chosen by the NEA hierarchy, as admitted on the stand during the case, as an example that you simply cannot vary from the doctrinaire line. The DCCTA made it quite clear that it was willing to accept the consequences of its actions, but it did not acquiesce in the visitation of

those consequences upon it in a manner calculated to suppress its own and others' constitutional and statutorily guaranteed rights.

II.

THE DECISION BELOW RAISES A SIGNIFICANT ISSUE OF FIRST IMPRESSION THAT WILL HAVE MAJOR IMPACT ON STATUTORY CONSTRUCTION AND INTRA-UNION RELATIONS NATIONWIDE. SUCH ISSUES SHOULD BE RESOLVED BY THE SUPREME COURT OF THE UNITED STATES.

Although this is the first case raising the issue of national labor legislation's application to public employee unions that organize in the private sector, it will not be the last. Collective bargaining has, in the last few years, become a reality for the public employees of America. The major area of union growth today is in the public sector. These same rapidly expanding unions are affiliated with and often simultaneously organizing in private sector groups. Whether or not a large public sector union's dabbling in the private field brings them within the purview of federal labor legislation is a question that must be answered.

In addition, this particular case looms disproportionately influential on the national scene because of its concern with teachers. The public schools have traditionally been the seat of tests for the rights of so many of our citizenry. With approximately two and a half million teachers in the United States organized into two major

unions—NEA having approximately 1.5 million members and the American Federation of Teachers having in excess of ½ million members—there is intense rivalry that is causing immense funds and energy to be dissipated on struggles for labor supremacy rather than concentrating on educational improvement, the purpose of each of the two unions. It has become a war of attrition. The merger between the two organizations has been a subject of discussion almost continuously during the 70's. The NEA broke off talks in late 1973. There are, however, already mergers involving 200,000 teachers in Los Angeles, New Orleans, Flint, Michigan, and all of New York State. These teachers, in fact all teachers, are looking to the Court for resolution of the issue as to whether or not a local affiliate of the NEA can have the most drastic discipline action available to the union brought against it for discussion of merger and proposal of a future merger. The unreasonable severity of the punishment visited upon the local association was sufficient to bring almost all discussion of merger to a standstill within the NEA itself. Others who have disagreed have been similarly dealt with. Dade was made an example by the NEA—DCCTA now asks the Supreme Court to turn that example around and demonstrate to the teachers and public employees of this Nation that Congress and the Courts have joined together to guarantee protections for those union members and those locals who exercise the same freedom of speech and freedom of association that the general citizenry takes for granted.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgments rendered by the lower federal courts in this case.

Respectfully submitted,

ELIZABETH J. DU FRESNE
TOBIAS SIMON &
ELIZABETH DU FRESNE, P.A.
1492 South Miami Avenue
Miami, Florida 33130
Counsel for Petitioner

SUPREME COURT OF THE UNITED STATES

October Term, 197__

NO. _____

DADE COUNTY CLASSROOM TEACHERS ASSOCIATION, INC.,

Petitioner,

vs.

NATIONAL EDUCATION ASSOCIATION,

Respondent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of May, 1976, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to:

STEPHEN J. POLLACK, ESQ.
Shea & Gardner
734 15th Street, N.W.
Washington, D.C. 20005
Counsel for Respondent.

RICHARD L. HORN, ESQ.
Milledge, Horn & Hermelee
2699 South Bayshore Drive
Miami, Florida 33133

I FURTHER CERTIFY that all parties required to be served have been served.

ELIZABETH J. DU FRESNE
TOBIAS SIMON & ELIZABETH DU FRESNE, P.A.
Counsel for Petitioner
1492 South Miami Avenue
Miami, Florida 33130
(305) 358-8611

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 74-63-Civ-JLK

NATIONAL EDUCATION ASSOCIATION,
Plaintiff,

vs.

DADE COUNTY CLASSROOM TEACHERS ASSOCIATION, INC.,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed June 2, 1974)

This cause was severed from the main action, Fed. R. Civ. P. 42(b), and was tried before the court without a jury. The Dade County Classroom Teachers Association herein seeks to enjoin its disaffiliation from the National Education Association on both constitutional and statutory grounds. The court, having considered the record and being fully advised in the premises, enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Though chartered by Congress, the National Education Association (NEA) is a private organization of teachers and other persons involved in educational activities. As stated in its charter, the NEA's purpose is "[t]o elevate the character and advance the interests of the pro-

fession of teaching and to promote the cause of education in the United States." 34 Stat. 805 (1906). The principal activity of the association is organizing teachers into a coherent and effective bargaining unit.

2. The NEA has a total membership of 1,439,663 persons: 1,434,510 persons are employed in the public sector; and 5,153 members are employed by private employers.

3. At the 1972 meeting of the NEA Representative Assembly, composed of delegates from the organization's various state and local affiliates, a resolution entitled Business Item 20 was approved. The resolution prohibited NEA and its affiliates from entering into mergers which would require affiliation with the AFL-CIO. However, NEA affiliates, which had already entered into such a merger, were exempt from the prohibition.

4. The question of local affiliation with the AFL-CIO was raised again at the meeting of the Representative Assembly in the summer of 1973, and was the subject of considerable debate. Ultimately, the delegates rejected a proposal which would have given local NEA affiliates the option to merge with local affiliates of the AFL-CIO. Instead, Business Item 52 was adopted. The resolution, which superseded Business Item 20, provides:

> "The NEA and its affiliates will not enter into a merger requiring affiliation with the AFL-CIO, or any other labor organization."

5. The passage of both Business Item 20 and Business Item 52 reflected a concern that the merged NEA affiliates were paying money into the AFL-CIO which, in turn, was used to compete against non-merged NEA affiliates. There was a similar concern that the merged NEA affiliates were indirectly supporting the AFL-CIO's efforts to secure legislation that the NEA opposed.

6. Despite the passage of Business Item 52, a number of NEA local affiliates throughout the country have continued to discuss the possibility of merger with local AFL-CIO affiliates. There is underway within the NEA a considerable movement which will seek the repeal of Business Item 52 at the 1974 meeting of the Representative Assembly at Chicago.

7. Until April 22, 1974, the Dade County Classroom Teachers Association (DCCTA) had been a local affiliate of the National Education Association. The executive director of the local, Mr. Pat L. Tornillo, attended the 1973 Representative Assembly meeting and was one of the leading advocates of the local option proposal.

8. On December 10, 1973, the members of the DCCTA voted to accept a merger agreement with the Dade County Federation of Teachers (DFT), a local affiliate of the AFL-CIO. The agreement provided for the dissolution of the DCCTA and the DFT, and the establishment of an organization to be known as the United Teachers of Dade (UTD). The merger agreement also provided that the UTD "shall be a per capita paying local affiliate of the . . . County, State, and National AFL-CIO." After the DFT accepted the merger agreement, the membership of both organizations approved a constitution for UTD providing

that the new merged organization shall be affiliated with the Florida AFL-CIO and the Dade County Federation of Labor, AFL-CIO.

9. In January of 1974, the NEA instituted proceedings against the DCCTA in order to determine whether the local had violated Business Item 52. After a full hearing on the matter, the NEA Executive Committee, on April 22, 1974, decided that the DCCTA "has entered a merger requiring affiliation with the AFL-CIO," and that the DCCTA's "continued affiliation would be prejudicial to the best interests of the NEA." The DCCTA's affiliation was terminated.

10. Business Item 52 is a reasonable rule relating to the responsibility of every member to the organization as an institution.

CONCLUSIONS OF LAW

11. Since the NEA is a private organization, the NEA's adoption and enforcement of Business Item 52 did not violate the First Amendment guarantees of freedom of speech and assembly.

12. The NEA's adoption and enforcement of Business Item 52 did not violate the freedom of speech and assembly provisions of the Labor Bill of Rights because Business Item 52 is a reasonable rule relating to the responsibility of every member to the organization as an institution. 29 U.S.C. §411(a)(2) (1970).

DONE and ORDERED in chambers at Miami, Florida, this 27th day of June 1974.

/s/ James Lawrence King

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: Tobias Simon, Esq.
Stephen J. Pollack, Esq.
Richard L. Horn, Esq.

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT
OF FLORIDA

CASE NO. 74-63-Civ-JLK

NATIONAL EDUCATION ASSOCIATION,
Plaintiff,

vs.

DADE COUNTY CLASSROOM TEACHER'S
ASSOCIATION, INC.,
Defendant

ORDER AND JUDGMENT WITH RESPECT TO COUNTERCLAIM NO. 2

Counterclaim No. 2 of this action, having been severed from the main action and Counterclaim No. 1 for separate hearing and determination pursuant to Rule 42(b) of the Federal Rules of Civil Procedure, came on for trial on the merits before the Court, Honorable James Lawrence King, District Judge presiding; the issues having been duly tried on June 7, 1974; and the Court, following completion of the trial, having made the Findings of Fact and Conclusion of Law which were set forth in its Order of June 27, 1974.

It is ORDERED and ADJUDGED as follows:

That the Dade County Classroom Teacher's Association, Inc. take nothing as to Counterclaim No. 2, that Counterclaim No. 2 be dismissed on the merits and that the Na-

tional Education Association recover of the Dade County Classroom Teacher's Association, Inc., its cost with respect to Counterclaim No. 2.

Dated at Miami, Florida, this 30 day of September, 1974.

/s/ James Lawrence King
JAMES LAWRENCE KING
United States District Judge

Judgment Entered:
Sept. 30th, 1974

NATIONAL EDUCATION ASSOCIATION,
Plaintiff-Appellee,

v.

DADE COUNTY CLASSROOM TEACHERS' ASSOCIATION, INC.,
Defendant-Appellant.

No. 74-3850.

United States Court of Appeals,
Fifth Circuit.
March 3, 1976.

Appeal from the United States District Court for the Southern District of Florida; James Lawrence King, Judge.

Before GEWIN and AINSWORTH, Circuit Judges, and MARKEY*, Chief Judge.

PER CURIAM:

The judgment in this case is affirmed on the basis of the opinion of the District Court, ____ F. Supp. ____.

Affirmed.

*Of the U.S. Court of Customs and Patent Appeals, sitting by designation.

29 U.S.C. §402

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it —

1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

29 U.S.C. §411

Bill of rights; constitution and bylaws of labor organizations

(a) (1) Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates

in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. §412

Civil action for infringement of rights; jurisdiction

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

Pub.L. 86-257, Title I, § 102, Sept. 14, 1959, 73 Stat. 523.